

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service.	)	Case No. 14-841-EL-SSO
	)	
In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Amend its Certified Supplier Tariff, P.U.C.O. No. 20.	)	Case No. 14-842-EL-ATA
	)	

---

**JOINT MEMORANDUM CONTRA MOTION OF DUKE ENERGY OHIO, INC.  
TO CONTINUE THE CAP FOR RIDER DCI  
BY THE OHIO MANUFACTURERS' ASSOCIATION AND THE KROGER CO.**

---

**I. INTRODUCTION**

On May 11, 2018, Duke Energy Ohio, Inc. (Duke) filed a Motion to Continue the Cap for Rider DCI in order to extend the period during which Duke may collect revenue from its customers under its Distribution Capital Investment Rider (Rider DCI) beyond the date that the Public Utilities Commission of Ohio (Commission) approved for the expiration of Duke's third Electric Security Plan (ESP III).<sup>1</sup> Significantly, by Commission Opinion and Order and the express terms of Duke's ESP III, Rider DCI is set to expire on May 31, 2018.<sup>2</sup> In essence, in its motion, Duke wants the Commission to amend and modify its April 2, 2015 Opinion and Order to continue the cap for collection of charges under Rider DCI beyond the period that the Commission approved.<sup>3</sup> However, Duke has failed to show that such an amendment or modification of the prior Commission order is reasonable, just, or lawful. Duke also has failed to

---

<sup>1</sup> Motion of Duke Energy Ohio to Continue the Cap for Rider DCI (May 11, 2018) (Motion to Continue the Cap for Rider DCI).

<sup>2</sup> Opinion and Order at 80-81 (April 2, 2015).

<sup>3</sup> Motion to Continue the Cap for Rider DCI at 3-4.

establish that collecting additional charges under Rider DCI is “necessary to maintain essential electric service to consumers . . .” as required for a standard service offer pursuant to R.C. 4928.141. Without these mandated showings, Duke is not entitled to a modification of the Commission’s prior order, and the Duke’s Motion to Continue the Cap for Rider DCI should be denied.

Pursuant to the Commission’s Opinion and Order, Rider DCI is mandated to expire on May 31, 2018.<sup>4</sup> It also is capped at \$35 million for the first five months of 2018.<sup>5</sup> Duke now asks the Commission to extend the cap indefinitely until its new ESP is approved in Case No. 17-1263-EL-SSO, et al. Duke’s Motion to Continue the Cap for Rider DCI should be denied. The Commission should only continue those riders necessary to provide consumers with “a standard service offer of all competitive retail electric services necessary to maintain essential electric service,”<sup>6</sup> and Duke has failed to show that Rider DCI is essential to the provision of a standard service offer to customers. Duke also has failed to demonstrate that the modification is just and reasonable.

Pursuant to Ohio Adm. Code 4901-1-12(B)(1), the Ohio Manufacturers’ Association (OMA) and The Kroger Co. (Kroger) hereby file this Joint Memorandum Contra Duke’s Motion to Continue the Cap for Rider DCI.

---

<sup>4</sup> Opinion and Order at 80-81.

<sup>5</sup> Id. at 72.

<sup>6</sup> R.C. 4928.141.

## II. ARGUMENT

### A. **This Memorandum Contra is Timely and Not Time Barred By a Four-Year Old Entry that was Issued “In Light Of The Time Frame For These Proceedings.”<sup>7</sup>**

Before addressing the substantive issues with Duke’s Motion to Continue the Cap for Rider DCI, OMA and Kroger must respond to a procedural issue raised by both Duke and Ohio Energy Group (OEG) previously with regard to pleadings filed in this proceeding. Specifically, Duke and OEG have taken the position that, in light of an attorney examiner’s entry that was issued in this proceeding nearly four years ago at a time where the statutory deadline to consider an ESP application was looming, any memorandum contra to subsequent motions made in the same proceeding must also be filed within five days.<sup>8</sup> Contrary to Duke and OEG’s contentions, the procedural schedule established by the June 6, 2014 Entry is no longer applicable. Thus, the timing for this memorandum contra is governed by Ohio Adm. Code 4901-1-12(B)(1). OMA and Kroger’s joint memorandum contra Duke’s Motion to Continue the Cap for Rider DCI is now being timely filed in accordance with Ohio Adm. Code 4901-1-12(B)(1).

A brief review of the history of this proceeding and a straightforward reading of the June 6, 2014 Entry confirm that the five-day deadline for memorandum contra is not applicable at this time, nearly four years after the Entry was issued.

On May 29, 2014, Duke filed its application for a standard service offer pursuant to R.C. 4928.141.<sup>9</sup> On June 6, 2014, the Attorney Examiner in this proceeding held that Duke’s application “is for an electric security plan [ESP III] in accordance with R.C. 4928.143.”<sup>10</sup> Thus, as Duke’s Reply correctly noted, “[t]his case proceeded on a statutorily limited timeline” as of

---

<sup>7</sup> Entry at ¶ 5 (June 6, 2014).

<sup>8</sup> See Reply of Duke Energy Ohio, Inc., to Memorandum Contra Its Motion to Continue Riders (March 22, 2018) (“Duke’s Reply”); Reply of the Ohio Energy Group (March 20, 2018).

<sup>9</sup> Application (May 29, 2014).

<sup>10</sup> Entry at ¶ 2 (May 6, 2014) (the “Entry”).

May 29, 2014.<sup>11</sup> Specifically, that timeline was governed by R.C. 4928.143(C)(1), which states in pertinent part:

. . . The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. . . .<sup>12</sup>

Thus, due to the Commission's statutory mandate to issue an order on Duke's ESP application within 275 days, an abbreviated pleading schedule and discovery response time were required for the consideration of Duke's ESP application within the 275-day period.

Duke, however, fails to appreciate the limited scope of the Entry, instead hoping to impose an abbreviated pleading schedule on motions that have nothing to do with the whole purpose underlying the establishment of the abbreviated procedural schedule, which was to allow the Commission to meet the statutorily imposed deadline to rule on Duke's ESP application. In fact, the plain language of the June 6, 2014 Entry contradicts Duke's position as the Entry expressly notes that the revised procedural schedule was only required "[i]n light of the time frame for these proceedings," referring to the 275-day timeline set by statute.<sup>13</sup> Thus, the procedural schedule set in the June 6, 2014 Entry—including the five-day deadline for memoranda contra—was only applicable for that statutorily-abbreviated timeframe. While the Attorney Examiner has never amended or supplemented the June 6, 2014 Entry, as doing so would be unnecessary, the "time frame for these proceedings"—that is, the Commission's consideration of Duke's application for ESP III—ceased to be a concern with the Commission's April 2, 2015 Opinion and Order, ruling on Duke's ESP application.

---

<sup>11</sup> See Duke's Reply at 1.

<sup>12</sup> R.C. 4928.143(C)(1).

<sup>13</sup> Entry at ¶ 5.

The Supreme Court of Ohio has held that R.C. 4928.143(C)(1) “effectuates the proper, orderly, and prompt **resolution of initial ESP applications.**”<sup>14</sup> Thus, contrary to Duke’s and OEG’s positions, the procedural schedule set pursuant to R.C. 4928.143(C)(1) is limited only to the **initial** review of ESP applications, and does not have wide-ranging implications throughout the remainder of the proceeding. Because Duke’s initial ESP application has been resolved (subject to appeal), “the time frame for these proceedings” which precipitated the June 6, 2014 Entry’s abbreviated procedural schedule no longer exists.

Moreover, this conclusion regarding the scope of the Commission’s imposition of an abbreviated pleading schedule is further confirmed by the Commission’s recent action (or lack thereof) in this case. On March 9, 2018, Duke filed a Motion to Continue the Riders Included in the Electric Security Plan.<sup>15</sup> Despite Duke’s subsequent insistence that OMA, Kroger, the Office of the Ohio Consumers’ Counsel, and others are bound by the Commission’s earlier imposition of an expedited briefing requirement, the Commission has not ruled on this motion for more than two months. If the Commission were concerned that time was still of the essence after Duke’s ESP was approved, surely it would not have waited more than two months to address Duke’s motion.

Since the Entry’s abbreviated procedural schedule no longer applies, this memorandum contra is timely. Under Ohio Adm. Code 4901-1-12(B)(1), “[a]ny party may file a memorandum contra within fifteen days after the service of a motion.”<sup>16</sup> Duke’s Motion to Continue the Cap

---

<sup>14</sup> *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 43 (2011), citing *State ex rel. Jones v. Farrar*, 146 Ohio St.3d at 472 (“R.C. 4928.143(C)(1)’s deadline effectuates ‘the proper, orderly, and prompt’ resolution of initial ESP applications.”) (emphasis added).

<sup>15</sup> Motion of Duke Energy to Continue the Riders Included in the Electric Security Plan Approved Herein (March 9, 2018) (Motion to Continue Riders).

<sup>16</sup> Ohio Adm. Code 4901-1-12(B)(1).

for Rider DCI was filed on May 11, 2018. Therefore, all parties have until May 29, 2018 to file a Memorandum Contra.

As the Commission is well aware, all parties to this proceeding have been operating under the ESP that was approved in this case for over three years. Because the Commission's April 2, 2015 Opinion and Order remains in effect (subject to appeal), Duke and OEG cannot turn back the clock and impose a procedural schedule that was pre-conditioned on the Commission's April 2, 2015 Opinion and Order having not yet been issued.

**B. Duke's Motion for Leave to File a Reply Is Nonsensical, Unnecessary, and Reinforces the Above Arguments Regarding the Attorney Examiner's Four-Year Old Entry.**

On May 21, 2018, Duke filed a Motion for Leave to File a Reply to the Office of the Ohio Consumers' Counsel's (OCC) Memorandum Contra that makes several inaccurate legal and factual statements.<sup>17</sup> Duke states that OCC filed its Memorandum Contra on September 15, 2016.<sup>18</sup> Duke then states that it requested expedited treatment of its Motion to Continue the Cap for Rider DCI, and, because of this request, replies to OCC's memorandum contra are due within three days, pursuant to Ohio Adm. Code 4901-1-12(C).<sup>19</sup> Duke goes on to state that it is requesting leave to file its reply out of time due to an inadvertent error that resulted in Duke missing the three-day deadline it claims exists.<sup>20</sup>

The numerous problems with this series of statements are both legal and factual. First, OCC did not file any documents in this proceeding on September 15, 2016. Next, Duke's assertion that it asked for expedited treatment of its Motion to Continue the Cap for Rider DCI is

---

<sup>17</sup> See Duke Energy Ohio, Inc.'s Motion for Leave to File Reply to Memorandum Contra Motion to Continue the Cap for Rider DCI, Instantanr (May 21, 2018) (Motion for Leave).

<sup>18</sup> Id. at 1.

<sup>19</sup> Id.

<sup>20</sup> Id.

also baseless, as Duke made no such request.<sup>21</sup> Moreover, if Duke *did* ask for expedited treatment, the Commission's rules would have precluded a reply to a memorandum contra. Ohio Adm. Code 4901-1-12(C) specifically provides that no reply memoranda are permitted in cases where a party has asked for expedited treatment unless the Commission specifically requests one. Further, nowhere in Ohio Adm. Code 4901-1-12(C) does the Commission provide for a three-day response time to any motion or memorandum. But, as Duke did not actually request expedited treatment, the standard rules for motion practice under Ohio Adm. Code 4901-1-12 apply. Thus, Duke had seven days to file a reply to OCC's memorandum contra, and, therefore, its Motion for Leave is not necessary.<sup>22</sup>

If Duke's belief that it was filing its Reply out of time is not based upon Ohio Adm. Code 4901-1-12(C), but rather upon the June 6, 2014 Entry setting expedited pleading requirements due to the time constraints that existed at that time, Duke has, in effect stated its agreement with OMA, Kroger, and others that such an expedited schedule is no longer necessary. As Duke states, no parties are prejudiced by a filing that complies with Ohio Adm. Code 4901-1-12, but not with the expedited requirements of the 2014 Entry.<sup>23</sup> Similarly, no parties are prejudiced by Kroger and OMA complying with Ohio Adm. Code 4901-1-12 and filing its memorandum contra within the parameters established by that rule.

**C. In the Alternative, OMA and Kroger Request Leave to File Out-of-Time for Good Cause Shown.**

Nonetheless, if the Commission believes the June 6, 2014 Entry is applicable to Duke's Motion to Continue the Cap for Rider DCI filed nearly four years later, OMA and Kroger respectfully request leave to file this memorandum contra out of time for good cause shown.

---

<sup>21</sup> See Motion to Continue the Cap for Rider DCI.

<sup>22</sup> See Ohio Adm. Code 4901-1-12(B)(2)

<sup>23</sup> See *id.*

Granting such leave to OMA and Kroger will not harm or prejudice any party, nor will it impede this proceeding. The Commission routinely grants motions for out-of-time filings for good cause shown absent a showing of prejudice.<sup>24</sup> The Commission has granted late filings of memoranda contra in similar circumstances to those present here—even where a party files late for “clearly unwarranted” reasons.<sup>25</sup> That said, OMA and Kroger submit that, even if they misinterpreted the June 6, 2014 Entry and the scope of its effect under R.C. 4928.143(C)(1) and the applicability of Ohio Adm. Code 4901-1-12 to Duke’s current Motion, their interpretation was reasonable given the circumstances of this proceeding.<sup>26</sup> Thus, OMA and Kroger respectfully request that the Commission grant them leave to file this memorandum contra out-of-time for good cause shown.

**D. Duke Seeks to Amend the Commission’s April 2, 2015 Opinion and Order, But Has Failed to Establish that Such Amendment Is Just, Reasonable, and Necessary to Provide a Standard Service Offer to Consumers.**

By way of its Motion to Continue the Cap for Rider DCI, Duke is asking the Commission to amend its April 2, 2015 Opinion and Order to extend the caps on Duke’s collection of charges from customers under Rider DCI indefinitely until Duke’s next ESP is approved, thus allowing Duke to collect \$7 million per month well beyond the previously established termination date of May 31, 2018. Duke openly acknowledges that this collection of money from its customers would continue until “at the earliest . . . the late third quarter or early part of the fourth quarter of

---

<sup>24</sup> Ohio Adm. Code 4901-1-13(A) states that “[e]xcept as otherwise provided by law, and notwithstanding any other provision in this chapter, continuances of public hearings and extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown, or upon motion of the commission, the legal director, the deputy legal director, or an attorney examiner.”

<sup>25</sup> See, e.g., *In the Matter of the Application of Water & Sewer LLC for an Increase in Rates and Charges*, Case No. 03-318-WS-AIR, Entry at ¶ 9 (October 30, 2003) (“While this reliance was clearly unwarranted, the company will not be harmed by allowing the Hogans to present the same arguments as were presented by Mr. Koewler. The late filing of a memorandum contra by the Hogans will be allowed.”).

<sup>26</sup> See, e.g., *In the Matter of the Complaint of Kelly Rashedi*, Case No. 16-718-GA-CSS, Entry at \*1 (July 20, 2016) (“Therefore, under the circumstances, the Commission finds that Constellation’s motion to file its answer out-of-time should be granted.”); *In the Matter of City of Toledo*, Case No. 14-1944-EL-CSS Entry at ¶ 8 (January 6, 2016) (“Initially, the Commission finds that Toledo’s motion for leave to file a memorandum in opposition to FES’ motion to dismiss out of time is reasonable and should be granted.”).



2018.”<sup>27</sup> The Supreme Court of Ohio, however, has expressly rejected the Commission’s authority to grant the type of request Duke is seeking, noting that it would “hardly be a just and reasonable result.”<sup>28</sup> Duke has failed to show how such a result, i.e., a recurring \$7 million charge to Duke customers, would be just or reasonable. At the very least, and to the extent Duke is asking the Commission to depart from its prior order, Duke must explain how this new course is also substantively reasonable and lawful. The Court stated: “And if the commission does see fit to depart from a prior order, the commission ‘must explain why,’ and ‘the new course also must be substantively reasonable and lawful.’”<sup>29</sup> Duke has failed to explain how it has met that standard.

Duke offers several different purported justifications for the reasonableness of allowing this continuation of the Rider DCI cap beyond the Commission-approved expiration date. Duke first argues that Duke acted reasonably in filing its new ESP IV application to allow for sufficient time for approval prior to the expiration of its ESP III, and that its goal of achieving that approval was thwarted by an extended period of settlement discussions. Then, Duke argues, utilizing extra record evidence that has not been tested, that failure to extend the Rider DCI cap will force the company to choose between jeopardizing its creditworthiness or the reliability of the electric system. These contentions are ultimately unpersuasive.

First, Duke argues that it filed the application for its fourth ESP in sufficient time to allow for approval prior to the expiration of the ESP approved in this proceeding. To support this contention, Duke states that it complied with the Commission’s directive to file its fourth ESP application by June 1, 2017.<sup>30</sup> Duke surmises that because the Commission set this

---

<sup>27</sup> Motion to Continue the Cap for Rider DCI at 5.

<sup>28</sup> *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, ¶ 30 (2015).

<sup>29</sup> *Id.* at ¶ 17.

<sup>30</sup> Motion to Continue the Cap for Rider DCI at 4.

deadline, it “*incontrovertibly believed* that a new SSO would be in place well before the termination of ESP III.”<sup>31</sup> Duke further submits that one could not have predicted the length of time it would take to achieve a partial settlement of its ESP IV application and proceed to hearing.<sup>32</sup>

The idea that it was incontrovertible that the Commission believed a new SSO would be in place by June 1, 2018 is directly contradicted by the Commission’s Opinion and Order in this proceeding, which expressly provided for a process by which Duke could procure the load necessary to continue its SSO in the event a new SSO was not in place by April 1, 2018.<sup>33</sup> Had the Commission been similarly concerned about the expiration of the caps for Rider DCI in the event that a new ESP was not authorized by June 1, 2018, it could have provided a comparable process through which it could address those concerns. The Commission, of course, did no such thing. The Commission knew there was a possibility that Duke would not see a new ESP approved before this ESP expired, and chose not to provide for any extension of Rider DCI in such an event.

Moreover, Duke’s contention that “one could not predict the amount of time it would take” to reach a partial settlement and proceed to hearing<sup>34</sup> is similarly unsupported. Perhaps the best way to determine the approximate amount of time that will elapse between the date an electric distribution utility applies for a new ESP and the date upon which the Commission approves an ESP for that utility is the amount of time that similar proceedings have taken in the past. And in *every single ESP proceeding* between the approval of Duke’s ESP III in this case

---

<sup>31</sup> Id. (emphasis added).

<sup>32</sup> Id. at 5.

<sup>33</sup> Opinion and Order at 51 (“If a subsequent SSO is not authorized by the Commission by April 1, 2018, Duke shall procure, through the CBP process, 100 tranches of a full-requirements product for a term that is not less than quarterly or more than annually to be deliverable on June 1, 2018, until a subsequent SSO is authorized.”).

<sup>34</sup> Motion to Continue the Cap for Rider DCI at 5.

and its application for its ESP IV in Case Nos. 17-1263-EL-SSO, et al., significantly more than a year passed between the electric distribution utility's application and the Commission's eventual approval of an ESP: AEP-Ohio's extension of its ESP in Case Nos. 16-1852-EL-SSO, et al., was approved one year, five months, and two days after AEP-Ohio filed its application;<sup>35</sup> The Dayton Power and Light Company's latest ESP was approved 1 year, 7 months, and 28 days after the company filed its application in Case Nos. 16-395-EL-SSO, et al.;<sup>36</sup> and the FirstEnergy Companies' most recent ESP was approved one year, 7 months, and 27 days after FirstEnergy filed its application in Case No. 14-1297-EL-SSO.<sup>37</sup> As such, Duke's claim that it was blindsided by how long it has taken to conclude the proceedings in Case Nos. 17-1263-EL-SSO, et al., strains credibility.

Duke next contends that the Commission must allow Duke to continue the cap on collection under Rider DCI or else force the Company to make the undesirable choice of risking its creditworthiness (and by extension, its ability to make future investments) or the reliability of its electric service.<sup>38</sup> Duke's threats are unsubstantiated.

Although Duke presents calculations on the effect of a Commission decision to reject the Motion to Continue the Cap for Rider DCI will have on the Company's return on equity, and debt coverage ratio,<sup>39</sup> it does not put these untested numbers into context. Specifically, Duke does not state what these numbers would mean in terms of its creditworthiness or the ultimate

---

<sup>35</sup> See *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, et al.*, Case Nos. 16-1852-EL-SSO, et al., Amended Application (November 23, 2016) and Opinion and Order (May 4, 2018).

<sup>36</sup> See *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan, et al.*, Case Nos. 16-395-EL-SSO, et al., Application (February 22, 2016) and Opinion and Order (October 20, 2017).

<sup>37</sup> See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-El-SSO, Application (August 4, 2014) and Opinion and Order (March 31, 2016).

<sup>38</sup> Motion to Continue the Cap for Rider DCI at 6.

<sup>39</sup> Id. at 7.

risk that is at stake if the Company does not obtain an extension of the Rider DCI caps. Moreover, Duke proceeds with this argument as if there is nothing the Company can do to counter the temporary loss of DCI revenue. For instance, Duke never states that it has considered other measures to account for lost DCI revenue such as reduction in executive compensation, or reducing advertising costs, or evaluating the necessity of its various capital expenditures, or doing any sort of belt-tightening whatsoever. Duke's failure to account for the possibility that this ESP would expire without an approved one to take its place puts the Company in this supposed predicament, and it is unreasonable for Duke to now expect customers to pay it \$7 million per month to rectify problems caused by Duke's own poor planning.

But even if the Company truly could not find any other way besides the continuation of the caps on Rider DCI to continue its capital investments without detrimentally impacting its creditworthiness, the Company still has not demonstrated that the alternative—temporarily halting or slowing further distribution capital deployment—is unworkable. Duke makes the conclusory statement that “[i]t is undeniable that the Company’s proactive investment in its distribution system advances the state’s economy, facilitates improved service reliability, and further aligns the expectations of Duke Energy Ohio and its customers.”<sup>40</sup> Of course, Duke does not cite to any support for this statement. The Company does not begin to suggest what sorts of projects would be halted or how those projects would impact the reliability of the electric system. The Commission should require Duke to actually support its threats with evidence before it subjects customers to an additional \$7 million per month. OMA and Kroger have no desire to jeopardize the reliability of Duke’s electric system, but oppose Duke’s use of unsubstantiated threats to collect money from customers without offering evidence that the money collected will actually secure, enhance, or maintain reliability.

---

<sup>40</sup> Id. at 8.

R.C. 4928.143(C)(2)(b) expressly provides for what happens if the *ESP application* is terminated by the utility. The statute does not provide for or allow a utility to simply continue all provisions of its current ESP at the expiration of the current ESP. Thus, in the context of an ESP expiring by its own terms, the Commission is limited to ordering that which is “necessary to maintain essential electric service” to consumers. Absent Duke establishing how the continued collection of revenue under Rider DCI is necessary to maintain essential electric service and absent Duke demonstrating that a modification to its ESP III and the Commission’s Opinion and Order is warranted, the Commission should deny Duke’s Motion to Continue the Cap for Rider DCI.

### III. CONCLUSION

Duke has failed to demonstrate that amendment of the ESP III to extend the collection of \$7 million per month from customers through Rider DCI is reasonable or lawful. Accordingly, for the foregoing reasons, OMA and Kroger respectfully request that Duke’s Motion to Continue the Cap for Rider DCI be denied.

Respectfully submitted,

/s/ Kimberly Bojko  
Kimberly W. Bojko (0069402)  
**CARPENTER LIPPS & LELAND LLP**  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Email: [Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
(willing to accept service by email)

*Counsel for Ohio Manufacturers’  
Association*

/s/ Angela Paul Whitfield  
Angela Paul Whitfield (0068774)  
**CARPENTER LIPPS & LELAND LLP**  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Email: [paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  
(willing to accept service by email)

*Counsel for The Kroger Co.*

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Joint Memorandum Contra was served via electronic transmission upon the parties this 29<sup>th</sup> day of May, 2018.

/s/ Kimberly W. Bojko  
Kimberly W. Bojko

[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
[Schmidt@sppgrp.com](mailto:Schmidt@sppgrp.com)  
[Judi.sobecki@aes.com](mailto:Judi.sobecki@aes.com)  
[Bojko@carpenterlipps.com](mailto:Bojko@carpenterlipps.com)  
[perko@carpenterlipps.com](mailto:perko@carpenterlipps.com)  
[paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  
[Allison@carpenterlipps.com](mailto:Allison@carpenterlipps.com)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[yalami@aep.com](mailto:yalami@aep.com)  
[asonderman@keglerbrown.com](mailto:asonderman@keglerbrown.com)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)  
[dmason@ralaw.com](mailto:dmason@ralaw.com)  
[mtraven@ralaw.com](mailto:mtraven@ralaw.com)  
[rchamberlain@okenergylaw.com](mailto:rchamberlain@okenergylaw.com)  
[Steven.beeler@ohioattorneygeneral.gov](mailto:Steven.beeler@ohioattorneygeneral.gov)  
[Thomas.lindgren@ohioattorneygeneral.gov](mailto:Thomas.lindgren@ohioattorneygeneral.gov)

[Elizabeth.watts@duke-energy.com](mailto:Elizabeth.watts@duke-energy.com)  
[Rocco.dascenzo@duke-energy.com](mailto:Rocco.dascenzo@duke-energy.com)  
[Jeanne.Kingery@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)  
[jmcdermott@firstenergycorp.com](mailto:jmcdermott@firstenergycorp.com)  
[scasto@firstenergycorp.com](mailto:scasto@firstenergycorp.com)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[mwhite@igsenergy.com](mailto:mwhite@igsenergy.com)  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)  
[cloucas@ohiopartners.org](mailto:cloucas@ohiopartners.org)  
[swilliams@nrdc.org](mailto:swilliams@nrdc.org)  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)  
[jvickers@elpc.org](mailto:jvickers@elpc.org)  
[tony.mendoza@sierraclub.org](mailto:tony.mendoza@sierraclub.org)  
[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)  
[Campbell@whitt-sturtevant.com](mailto:Campbell@whitt-sturtevant.com)  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[glover@whitt-sturtevant.com](mailto:glover@whitt-sturtevant.com)

Attorney Examiners:

[Christine.pirik@puc.state.oh.us](mailto:Christine.pirik@puc.state.oh.us)  
[Nicholas.walstra@puc.state.oh.us](mailto:Nicholas.walstra@puc.state.oh.us)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/29/2018 2:46:27 PM**

**in**

**Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA**

Summary: Memorandum Joint Memorandum Contra Motion Of Duke Energy Ohio, Inc. To Continue The Cap For Rider DCI By The Ohio Manufacturers' Association and The Kroger Company electronically filed by Mrs. Kimberly W. Bojko on behalf of Ohio Manufacturers' Association and OMA & Kroger and Ohio Manufacturerers' Association and Kroger